

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 46-046-16-1-5-01519-17  
**Petitioners:** Dennis & Sharon Metheny  
**Respondent:** LaPorte County Assessor  
**Parcel No.:** 46-05-12-151-052.000-046  
**Assessment Year:** 2016

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Petitioners initiated their appeal for 2016 with the LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”). On August 10, 2017, the PTABOA issued notice of its final determination. Petitioners filed their Form 131 petition on September 26, 2017.
2. Petitioners elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
3. On April 5, 2018, Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held the hearing. Neither the ALJ nor the Board inspected the property.
4. Andrew Wolf appeared as counsel for Petitioners. Taxpayer Dennis Metheny was sworn as a witness for Petitioners. Jennifer Koethe appeared as counsel for Respondent. LaPorte County Assessor Michael Schultz, Chief Deputy Assessor Stacey Sweitzer, and appraiser Patrick Troy were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a single-family dwelling located at 6757 W. 450 N. in Michigan City.
6. For 2016, the assessed value is \$22,300 for the land and \$124,400 for the improvements for a total of \$146,700.
7. Petitioners requested a total assessed value of \$137,000 or \$138,000.

## Record

8. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Beacon summary for 6757 W. 450 N. (subject property),
Petitioner Exhibit 2:	Beacon summary for 6749 W. 450 N.,
Petitioner Exhibit 3:	Beacon summary for 6753 W. 450 N.,
Petitioner Exhibit 4:	Beacon summary for 6763 W. 450 N.,
Petitioner Exhibit 5:	Beacon summary for 7656 N. Brookside Ct.,
Petitioner Exhibit 6:	Beacon summary for 4977 Brookside Drive,
Petitioner Exhibit 7:	Beacon summary for 4932 N. Brookside Drive, <sup>1</sup>

Respondent Exhibit A:	Appraisal by Troy Appraisals, LLC,
Respondent Exhibit B:	Spreadsheet of comparable sale properties with Multiple Listing Service (“MLS”) listing summaries,

Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

## Objections

9. Petitioners’ counsel objected to Respondent recalling Mr. Troy as a rebuttal witness because Respondent had rested its case. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E. 2d 175, 180 (Ind. 1993). The fact that Respondent’s counsel called the rebuttal witness after indicating Respondent had rested its case-in-chief did not prejudice Petitioner and the objection is overruled.

## Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*,

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<sup>1</sup> Petitioners’ exhibit list and testimony referenced this property incorrectly as 6932 N. Brookside Dr.

694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.

11. First, Ind. Code § 6-1.1-15-17.2 (a) “ applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indianan board of tax review or to the Indiana tax court.”
12. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. Based on an agreement resulting from an appeal, the 2015 assessed value was \$135,000. The 2016 assessed value of \$146,700 represents an increase in excess of 5%. Consequently, Respondent has the burden of proof for 2016.

### **Summary of Parties’ Contentions**

15. Respondent’s case:
  - a. LaPorte County Chief Deputy Assessor Stacey Sweitzer testified that, as part of the reassessment process for the subject township, she physically inspected the subject property. She verified the measurements of the improvements, the condition of the property, and inspected the exterior features and outbuildings. She contends that not every property in a township or neighborhood will be adjusted consistently when reassessed because of additions or changes in condition. *Sweitzer testimony.*
  - b. Ms. Sweitzer prepared a spreadsheet of comparable sale properties. She used sales from 2013 through 2016 in order to include two sales Petitioners provided. In her sales comparison approach, she found sales of bi-level and tri-level homes. She contends the assessed value based on the average sale price would be \$149,459. She further contends that using only tri-levels, because the subject property is a tri-level,

the assessed value would be \$153,337 which is “a little higher” than the subject property’s assessment of \$146,700. *Sweitzer testimony; Resp’t Ex. B.*

- c. Respondent also ordered an appraisal of the subject property from Troy Appraisals, LLC. Patrick Troy, a certified residential appraiser, prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Mr. Troy determined the value of the property to be \$158,000 as of January 1, 2016, and that is the value Respondent is requesting. *Troy testimony; Resp’t Ex. A.*
- d. Mr. Troy contends he prepared his appraisal based on an exterior inspection, information from the assessor’s records, and MLS data. In compiling his report, he searched for homes within the same or a similar neighborhood, in the same township, and in the same school district. He then looked for homes of a similar design and age, similar living area, and similar room count. He also looked for the most recent sales, ideally ones that had occurred within six months. Mr. Troy contends he did not use sales located on Petitioners’ street because none fit his search parameters. *Troy testimony; Resp’t Ex. A.*
- e. Mr. Troy used three purportedly comparable sales in his sales comparison grid. Of those three sales, he gave the most weight to comparable #2 because it had similar square footage, a similar room count, and a lower level finished area. According to Mr. Troy, the other sales were also “supportive.” *Troy testimony; Resp’t Ex. A.*
- f. Mr. Troy testified that the new roof Petitioners added in 2016 would likely add value to the property. He contends potential buyers would probably pay a little more for the property because they would not have to incur the additional cost involved in replacing the roof. *Troy testimony.*
- g. Mr. Troy testified that he had not reviewed Petitioners’ exhibits in detail regarding the frontage of the properties. He thinks one of the properties on Brookside, however, was an irregular-shaped lot on a cul-de-sac that definitely had less frontage. He contends that sometimes builders sell those types of lots for less due to the irregularity. *Troy testimony; Pet’r Ex. 5.*

16. Petitioners’ case:

- a. Petitioners’ property is a tri-level house situated on a private road. Petitioners contend that the road is owned and maintained by the lady at the end of the road and that they have an easement for ingress and egress only. *Metheny testimony.*
- b. Petitioners have lived on the property for thirty-one years. They recently installing a new roof due to a leak. They contend they have not improved the property or made any additions, they have only maintained it. *Metheny testimony.*

c. Petitioners contend their property is over-assessed when compared with other similar properties. Those purportedly comparable properties are as follows:

- 6749 W. 450 N., is twice the size of the subject property. The 2016 assessed value is \$131,800. The 2015 assessed value was \$129,600.
- 6753 W. 450 N. is directly across the street from the subject property. The lot size is twice that of the subject and the house is larger. The 2016 assessed value is \$138,900. The 2015 assessed value was \$140,400.
- 6763 W. 450 N. is a tri-level house located three houses from the subject property. The 2016 assessed value is \$131,100. The 2015 assessed value was at \$127,600.
- 7656 N. Brookside Court is within a mile of the subject property and the lot size is larger than the subject property. The 2016 assessed value is \$127,000. The 2015 assessed value was \$147,100.
- 4977 Brookside Drive's lot size is 124 feet by 180 feet, which is slightly larger than the subject property. The 2016 assessed value is \$132,800. The 2015 assessed value was \$145,600.
- 4932 N. Brookside Drive is situated on a one-half acre lot. The 2016 assessed value is \$133,500. The 2015 assessed value was \$154,300.

*Metheny testimony; Pet'r Exs. 1-7.*

- d. Petitioners contend that, after comparing their assessed values with the values of the purportedly comparable properties, an equitable assessment for the subject property would be \$112,000 or \$115,000 for the improvements with a total assessed value of \$137,000 or \$138,000. *Metheny testimony.*
- e. Petitioners complained that they have been unable to reach a compromise with Respondent. They have hired an attorney for the last three years. They contend the process is costing them extra money and is costing the county money to hire an appraiser and that it is "ridiculous to have a hearing like this." *Metheny testimony.*

### **Analysis**

17. Respondent established a prima facie case in support of an increase in the 2016 assessed value. Petitioners did not sufficiently rebut or impeach Respondent's case. The Board reached this decision for the following reasons:

- a. Indiana assesses real property on the basis of its true tax value, which the Department

- of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2016 assessments, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.
  - c. As explained above, Respondent had the burden of proof. Respondent presented an appraisal prepared in accordance with USPAP in which a certified appraiser valued the subject property at \$158,000 as of January 1, 2016. An appraisal performed in accordance with generally recognized appraisal principles is generally sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Respondent requested that the assessed value be increased to the appraised value. The board finds the respondent has sufficiently established that the property is worth \$128,000.
  - d. Once Respondent established a prima facie case, the burden shifted to Petitioners to offer evidence to impeach or rebut Respondent’s case. *See Meridian Towers*, 805 N.E.2d at 480 (Ind. Tax Ct. 2003).
  - e. Petitioners contend their property is over-assessed compared to purportedly similar properties. Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district’s boundary. *See* Ind. Code § 6-1.1-15-18(c)(1). But as is the case with the sales comparison approach, the party offering the assessments must show the properties are comparable. *Long*, 821 N.E.2d at 470-71. Conclusory statements do not suffice. Instead, the party must explain how the properties compare to each other in terms of relevant characteristics that affect market value-in-use. *Id*. The party must similarly explain how relevant differences affect the value.
  - f. Petitioners submitted Beacon information for six purportedly comparable properties. Mr. Metheny generally compared the assessed values and lot sizes of the properties

with his property but did not explain how relevant differences affected their values. Nor did he adjust any of the assessments, either quantitatively or qualitatively, to account for those differences.

- g. Consequently, Petitioners' assessment comparison approach falls short of the type of analysis contemplated by *Long*. As a result, the assessment evidence lacks probative value and is insufficient to rebut Respondent's prima facie case.

### CONCLUSION

- 18. Respondent established a prima facie for an increase in the 2016 assessed value and Petitioners failed to rebut or impeach that case. Consequently, the Board finds for Respondent.

### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2016 assessed value should be \$158,000.

ISSUED: July 3, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. .

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>.